HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 892 of 2005

Sachin S/o Girdhari Lal Khurana
R/o Bahet P.S. Bahet
District Saharanpur ……Applicants

Versus

4.State of Uttaranchal
5.Judicial Magistrate, Roorkee
6.Smt. Savita
D/o late Shri Jagdish Prasad
R/o 153/5 Solani Kunj
P.S.Kotwali Rookee
District Haridwar …..Respondents.

Hon'ble J.C.S.Rawat,J.

1) This petition has been filed by the applicant for quashing the summoning order dated 16.1.2004 passed by Judicial Magistrate, Roorkee in case No. 2494/2003 Smt. Savita Vs. Girdhari Lal Khurana under sections 138 of Negotiable Instrument Act.

2) Brief facts of the case are that the respondent No. 3 filed a complaint before the Judicial Magistrate, Roorkee against the applicant and his father Girdhari Lal Khurana with the allegations that a cheque amounting to Rs.1 lac was handed over to the respondent No. 3 by Girdhari Lal Khurana. When the complainant submitted the cheque before the bank, the cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, the complainant served notice to Girdhari Lal Khurana required under section 138 of the Negotiable Instrument Act and not to the present applicant, Thereafter, the statement under section 200 Cr.P.C. was recorded and

the learned Magistrate took cognizance against the applicant vide order dated 16.01.2004. Feeling aggrieved by this, the applicant preferred the present petition.

3) Heard Sri Manish Arora learned counsel for the applicant and Sri Pankaj Miglani learned counsel for the respondent No.3

4) Sri Pankaj Migalni learned counsel for the respondent No. 3 filed a Misc. Application bearing No. 370/2006 that the present petition may be allowed as the notice required under Section 138 of the Negotiable Instrument Act has not been served upon the present applicant-Sachin S/o Girdhari Lal Khurana, therefore, the proceedings may be quashed against the present applicant. It has been prayed in that application that the trial court may be directed to expedite the trial and conclude the same expeditiously. Perusal of the record reveals that no notice under section 138 Negotiable Instrument Act had been given to the applicant. According to para 1 of the compliant, the cheques were also given by Girdhari Lal and according to para 6 of the complaint the notice was sent to Girdhari Lal. The learned Magistrate while taking cognizance had not bothered to see the contents of the compliant and the evidence on record. Therefore, the cognizance order is bad in law.

5) In view of the foregoing discussions, I find that the petition of the applicant is liable to be allowed.

6) The petition is allowed. Summoning order dated 16.01.2004 passed by Judicial Magistrate, Roorkee in

case No. 2494/2003 Smt. Savit Vs. Girdhari Lal Khurana under section 138 of Negotiable Instrument Act and the proceedings are quashed only against the present applicant- Sachin. The learned Magistrate is directed to dispose of the trial expeditiously.

(J.C.S.Rawat, J.)

Dated 06.03.2006
LSR